APPENDIX A

Order of Court of Appeals Amending Remittitur

STATE OF NEW YORK
IN COURT OF APPEALS

At a Court of Appeals for the State of York, held at Court of Appeals Hall in the City of Albany on the Second day of July A. D. 1968.

Present,

HON. STANLEY H. FULD,
Chief Judge, presiding,

Mo. No. 689

In the Matter of
Santo R. Sgarlato, Jr., an Attorney.
Solomon A. Klein,

Respondent,

Santo R. Sgarlato, Jr.,

Appellant.

A motion to amend the remittitur in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is granted, the return of the remittitur requested and, when returned, it will be amended by adding thereto the following:

Appendix A—Order of Court of Appeals Amending Remittitur

Upon the appeal herein there was presented and necessarily passed upon a question under the Constitution of the United States, viz.: Appellant contended that he was deprived of due process in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States in that there were introduced against him in this disciplinary proceeding statements elicited from him under threat of disbarment if he did not make such statements. The Court of Appeals held that there was no violation of appellant's constitutional rights.

And the Appellate Division of the Supreme Court, Second Judicial Department, hereby is requested to direct its Clerk to return said remittitur to this Court for amendment accordingly.

Gearon Kimball
Deputy Clerk

APPENDIX B

Statutes and Rules Involved

United States Constitution, Amendment V

No person . . . shall be compelled in any criminal case to be a witness against himself. . . .

United States Constitution, Amendment XIV

Section 1 . . . nor shall any State deprive any person of life, liberty, or property, without due process of law. . . .

Section 90 of New York Judiciary Law

1. . . .

2. The supreme court shall have power and control over attorneys and counsellors-at-law and all persons practicing or assuming to practice law, and the appellate division of the supreme court in each department is authorized to censure, suspend from practice or remove from office any attorney and counsellor-at-law admitted to practice who is guilty of professional misconduct . . . or any conduct prejudicial to the administration of justice. . . .

Special Rules Regulating the Conduct of Attorneys and Counselors at Law in the Second Judicial Department

Rule 2. Penalty. An attorney who violates any of these special rules shall be deemed to be guilty of professional misconduct within the meaning of subdivision two of section 90 of the Judiciary Law.

Rule 3. Statements as to retainers in actions or claims arising from personal injuries. . . . Every attorney who, in connection with any action or claim for damages for

personal injuries . . . accepts a retainer or enters into an agreement, express or implied, for compensation for services rendered or to be rendered in such action, claim or proceeding, whereby his compensation is to be dependent or contingent in whole or in part upon the successful prosecution or settlement thereof, shall, within thirty days from the date of any such retainer or agreement of compensation, sign and file in the office of the clerk of the Appellate Division, Second Judicial Department, a written statement setting forth the date of any such retainer or agreement of compensation, the terms of compensation, the name and home address of the client and the name and office address of the attorney, and the date and place of the occurrence of the injury. . . .

Rule 4. Deposit of collections-notice. Where an attorney who has accepted a retainer or entered into an agreement as referred to in the preceding rule, shall collect any sum of money upon any such action, claim or proceeding, either by way of settlement or after a trial or hearing, he shall forthwith deposit the same in a bank or trust company in a special account, separate from his own personal account and shall not commingle the same with his own funds. Within ten days after the receipt of any such sum he shall cause to be delivered personally to such client or sent by registered mail, addressed to such client at the client's last known address, a statement in writing setting forth the amount received, the date when and the name of the person from whom he received the same, and the amount which he claims to be due for his services and disbursements, specifying the same separately. At the same time the attorney shall pay or remit to the client the amount shown by such

statement to be due the client, and he may then withdraw for himself the amount so claimed to be due him for compensation and disbursements. . . .

Rule 5. Preservation of records of actions, claims and proceedings. In every action, claim and proceeding of the nature described in rule three, attorneys for all the parties shall preserve the pleadings, records and other papers pertaining to such action, claim and proceeding, and also all data and memoranda of the disposition thereof, for the period of at least five years after any settlement or satisfaction of the action, claim or proceeding or judgment or final order thereon, or after the dismissal or discontinuance of any action or proceeding brought.

N.Y. Judiciary Law, Sec. 474

§474. *Compensation of attorney or counsellor*

The compensation of an attorney or counsellor for his services is governed by agreement, express or implied, which is not restrained by law, except that no agreement made hereafter between an attorney and a guardian of an infant for the compensation of such attorney, dependent upon the success of the prosecution by said attorney of a claim belonging to said infant, or by which such attorney is to receive a percentage of any recovery or award in behalf of such infant or a sum equal to a percentage of any such recovery or award, shall be valid or enforceable unless made as hereinafter provided. An attorney may contract with the guardian of an infant to prosecute, by suit or otherwise, any claim for the benefit of an infant for a compensa-

tion to said attorney dependent upon the success in the prosecution of such claim, subject to the power of the court, as hereinafter provided, to fix the amount of such compensation. Whenever such a contract shall have been entered into between an attorney and a guardian of an infant, upon the recovery of a judgment, or the obtaining of an award in behalf of the said infant, or upon any compromise or settlement of such claim, the attorney may apply, upon notice to the guardian, to the judge, justice or surrogate before whom the said action or proceeding was tried, or to whom an application for compromise or settlement under article eighty of the civil practice act was made, in case the said action or proceeding was tried, or the said application was made at a court held within this state; or to a special term of said court, in case the said action or proceeding was tried before some person other than a justice thereof, or said claim was compromised or settled after said suit was begun, or in case of the death or disability of the judge or justice before whom the action was tried; or to special term of the supreme court in case the recovery, award, compromise or settlement was not had in any court of this state. Such application shall set forth briefly the contract, the services performed by the attorney and pray that there be awarded to him a suitable amount out of the recovery, award, compromise or settlement obtained through his efforts as attorney on behalf of the infant. The court, judge or surrogate to which such application is made, upon being satisfied that due notice of the said application has been given to the said guardian, shall proceed summarily to determine the value of the services of said attorney,

taking such proof from either the attorney or the guardian by affidavit, reference or the examination of witnesses before the said court, judge or surrogate, as may seem to be necessary and proper, and shall thereupon make an order determining the suitable compensation for the attorney for his services therein, which sum shall thereafter be received by the said attorney for his services in behalf of the said infant; and no other compensation shall be paid or allowed by the guardian for such services out of the estate of said infant. If a copy of such order awarding the compensation with notice of entry be thereafter served by the said attorney upon the adverse party to the said litigation or the person making such compromise or settlement and upon the custodian of the funds recovered, in case there be such custodian, such award shall become and constitute a lien to the amount thereof on behalf of the said attorney upon such recovery, award, settlement or fund.

Article 80 of New York Civil Practice Act

Art. 80—PROCEEDING FOR THE SETTLEMENT OF AN INFANT'S CLAIM

Section

1320. When application may be made.

1321. Who must make application.

1322. Notice to be given.

1323. Denial of application where settlement would exceed court's jurisdiction.

1324. Final order.

§ 1320. *When application may be made.* In any instance in which an infant has a claim for damages for personal injury, injury to property or for breach of contract, an application for approval of a compromise or settlement of such claim may be made to any court or a judge of any court in which an action could have been brought to recover the amount of the proposed settlement. No application shall be made under this article if an action has been commenced on behalf of the infant to recover such damages.

Added by L. 1947 ch. 366, effective Sept. 1.

§ 1321. *Who must make application.* Such application must be made by petition of the father or mother of the infant, or if the parents are separated, then by the parent having legal custody of the infant, or if the parents are dead, incompetent or have deserted or abandoned the infant, then by a special guardian appointed for such purpose. When the application is made on behalf of an infant of the age of fourteen years or older, the infant must join therein.

Added by L. 1947 ch. 366, effective Sept. 1.

§ 1322. *Notice to be given.* Notice of this proceeding shall be given, in the discretion of the court or judge, to such persons and in such manner as the court or judge may direct.

Added by L. 1947 ch. 366, effective Sept. 1.

§ 1323. *Denial of application where settlement would exceed court's jurisdiction.* If the court or judge shall find that an adequate settlement would exceed the amount which could be recovered in an action in such court, the court or judge shall deny the application without prejudice to peti-

tioner's right to make application in a court of appropriate jurisdiction.

Added by L. 1947 ch. 366, effective Sept. 1.

§ 1324. *Final order.* Upon approval of the application by the court or judge, a final order of settlement may be entered without costs.

Added by L. 1947 ch. 366, effective Sept. 1.

Rule 294 of New York Rules of Civil Practice

Rule 294. *Application to compromise infants' claims or actions; procedure; conflicting interests of infants attorneys.* On any application in a pending action or under article eighty of the civil practice act, for the approval by a court of the compromise or settlement of a claim or cause of action belonging to an infant, the procedure shall be as follows:

1. No attorney having or representing any interest conflicting with that of an infant may represent such infant. If the infant and his guardian or petitioner are represented by an attorney, and if the court or judge deem it necessary, a full examination by the court or judge or by an official referee may be had into all the facts regarding the reasonableness and propriety of such settlement and of the fee which the infant's attorney asks to be allowed.

* * * * *

3. The infant, the petitioner or guardian ad litem, and the attorney making the application shall attend before the court. However, if unusual circumstances demonstrate that

the attendance of an infant and guardian ad litem before the court is unnecessary to a proper determination and would constitute a hardship on such attorney and guardian ad litem, the court may waive the attendance of the infant and guardian ad litem, or either, noting the reasons therefor in the order. In addition to the document and papers hereinafter required to be submitted to the court, the court may also require such further documents and information to be submitted to it as it may deem necessary to a proper determination of the application.

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7. If the infant and his guardian or petitioner are represented by an attorney, the affidavit of the attorney shall set forth by whom, on what date and under what terms he was retained, the services rendered by him, the fee he asks to be allowed, the acts complained of, the terms of the proposed settlement with a brief statement of his reasons for recommending the same; and shall state that he has not become concerned in the application or its subject matter at the instance of such defendant directly or indirectly and that he has not received and is not to receive any compensation from such defendant directly or indirectly.

If the infant and his guardian or petitioner are not represented by an attorney, and the papers are prepared by the attorney for the defendant, the affidavit of such attorney shall contain the information required by subdivision 2.

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9. Upon the approval of a proposed settlement by the court or judge, an order of settlement or a judgment may be entered without costs.